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May 8, 2006

Mark C. Elmer  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
999 Eighteenth Street, Suite 945  
Denver, CO 80202

Re: Richardson Flat Site: Draft RD/RA Consent Decree Comments

Dear Mark:

This is in response to EPA's first draft of the Remedial Design/Remedial Action Consent Decree for the Richardson Flat Site ("RD/RA CD"), dated March 21, 2006. While it appears that we have been able to reach consensus as to many issues, there are a few remaining issues that are very important to United Park City Mines Company ("United Park"). We have identified these issues and made suggested changes in the attached redline of the RD/RA CD (Exhibit A) (we will also send you an electronic version of this document). While most of the proposed revisions are self-explanatory, we would like to take this opportunity to provide the following specific comments.

Clean Water Act. An important focus of the RI/FS at the Site was the potential impact of the Site on Silver Creek. While the technical evidence ended up supporting the conclusion that the Site is having no appreciable impact on Silver Creek, the Record of Decision requires that a substantial amount of remedial construction work be performed in the wetland area between the Main Embankment and Silver Creek. It also requires that certain tailings material be removed from Area B, which includes portions of the South Diversion Ditch. By undertaking to perform this work, United Park will be running the risk that its activities may give rise to claims under the Clean Water Act. The company's concerns in this respect are also based in part on the Upper Silver Creek Watershed Stakeholders Group ("Watershed Group") process, which has focused specifically on the Site and its potential impacts on Silver Creek. Certain members of the Watershed Group have indicated that they would consider using, among other things, the Clean Water Act as an enforcement mechanism in the process of achieving the Watershed Group's objectives. Under these circumstances, the Company believes strongly that EPA's Covenant Not

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to Sue should specifically mention the Clean Water Act. This request is consistent with several RD/RA Consent Decrees with which we are familiar, including ARCO settlement at Milltown, which we have previously discussed.

General Reservations of Rights. As you know, United Park will continue to own the Site after completion of remedial action. Therefore, the provisions of Paragraph 84(c) must be modified to reflect the company's current owner "status" liability for the Site. Modification of this provision is consistent with the model RD/RA CD, which recognizes that this provision may need to be modified if a party will continue to have a long-term relationship with the site in question. In addition, the inclusion of a reservation for "response costs that are not within the definition of Future Response Costs (e.g. past response costs)" is overbroad. EPA has appropriately limited the definition of Future Response Costs for purposes of United Park's obligation to pay oversight costs, an unintended consequence of this change was to expand the general reservation of rights beyond the scope of the model RD/RA CD. The present draft would have the effect of limiting the covenant not to sue in such a way that the United State's covenant would appear to extend only to oversight costs and nothing more. We do not believe this was the intent of the Parties and have suggested changes to restore the reservation of rights to its original scope, as set forth in the model.

"Site" Definition. As you know, the entire parcel or property that includes the Richardson Flat Site consists of approximately 650 acres. EPA agreed to define the scope of the Site for purposes of the Remedial Investigation to a "Study Area" that included what the agency determined to be the fullest extent of potential contamination. See correspondence attached hereto as Exhibit B. As you will notice, EPA agreed to designate, by metes and bounds description, specific property excluded from further agency interest. As a result of the foregoing, we are reluctant to agree to a definition of the Site that may call into question the parties' previous agreement.

Access and Institutional Controls. As you know, the proposed remedial action anticipates reducing the present areal extent of the Site by moving relatively large quantities of mine wastes and impacted soils from outside of the tailings impoundment containment dike to inside of that boundary. As a result, it will not be necessary to encumber areas outside of the impoundment containment dike with institutional controls and other similar covenants. United Park intends to create a legal description for purposes of Article IX of the RD/RA CD that includes areas within the tailings impoundment where wastes and impacted soils will be maintained long-term. United Park is in the process of developing a diagram, for EPA review, of the area that the company proposes be defined as the area to be restricted.

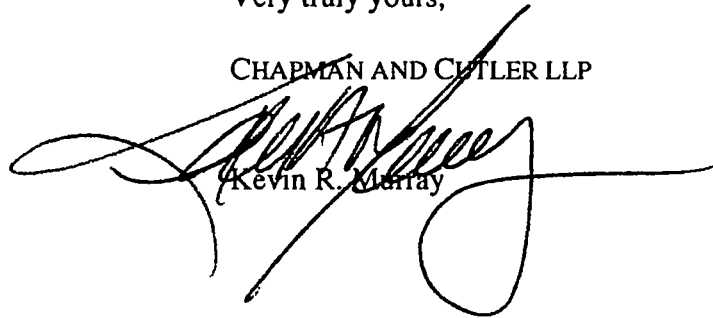
Performance Guarantee. We are working closely with United Park's business people to identify the company's preferred alternative for meeting the performance guarantee requirements. We understand that United Park would like to propose a form of corporate guarantee that the company has used successfully for financial assurance in other contexts. We still need a few days to propose a draft form of guarantee for EPA's review and comment but wanted to go ahead and get this revision out to you rather than delay the process further. In any event, we anticipate that the final RD/RA CD will reflect the company's preferred alternative form of performance guarantee and will get back to you shortly on this issue.

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We are grateful for your assistance on this matter and look forward to reaching a mutually agreeable solution that will allow remediation of the Richard Flat Site to begin as early as possible.

Very truly yours,

CHAPMAN AND CUTLER LLP



Kevin R. Murray

KRM:pw

Enclosure



**Kevin Murray**  
<kmurray@chapman.co  
m>

05/08/2006 04:30 PM

"Mark C. Elmer" <Mark.Elmer@usdoj.gov>, Peggy  
To Livingston/ENF/R8/USEPA/US@EPA, Kathryn  
Hernandez/EPR/R8/USEPA/US@EPA  
cc Kerry Gee <kcgee@unitedpark.com>, "Bret F.  
Randall" <randall@chapman.com>

bcc

Subject

Please find attached our comments to the proposed RD/RA Consent Decree for Richardson Flats. A hard copy will follow via Federal Express.

**CIRCULAR 230 DISCLOSURE:**

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ElmerLetter.pdf

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RDRACD.Redline.pdf

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STUDY AREA BNDY R FLAT.pdf

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StudyAreaLetter1.pdf

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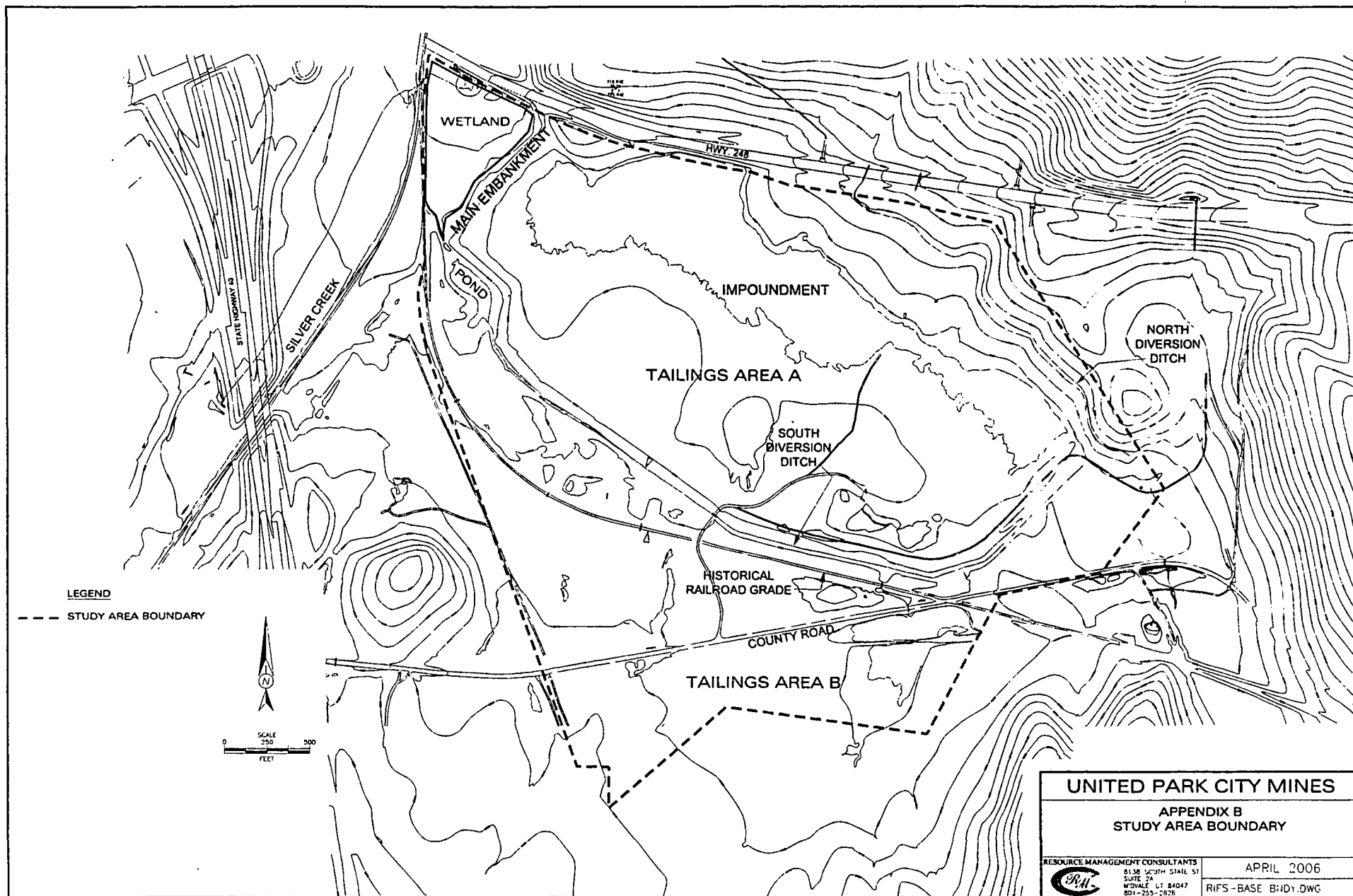
StudyAreaLetter2.pdf

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FILE COPY

January 30, 2002

Mr. Jim Christiansen  
Richardson Flat Tailings Project Coordinator  
Superfund Remedial Section, 8EPR-SR  
US EPA, Region VIII  
999 18<sup>th</sup> Street  
Denver, Colorado 80202-2466

RE: Richardson Flat Site Boundary

Dear Mr. Christiansen:

In response to your comments on my January 15, 2002 letter regarding the boundary on Richardson Flat, I have had Alliance Engineering adjust the boundary to reflect your concerns. The boundary has been shifted to the southwest and is adjacent to the old roadway that was formerly an airstrip.

Through this letter, United Park City Mines Company formerly requests comfort letter(s) that state that the parcels described in the legal descriptions lie outside of the Site Boundary of the Richardson Flat site and that EPA and UDEQ have no further interest in these areas. As stated in my earlier letter, I am aware of your busy schedule and would like to offer any assistance United Park can provide that may make this task easier for you.

I have attached the revised descriptions of the three parcels (Out parcel 1, Out parcel 2 & Out parcel 3) on which United Park is seeking comfort letters. There is also an exhibit attached.

Thank you for your quick response to the first letter. Again, if there is anything that I can do to help you with this please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry C. Gee".

Kerry C. Gee

cc: Hank Rothwell  
Paul Lammers  
Kevin Murray  
Muhammad Slam  
Jim Fricke

Attachments



## LEGAL DESCRIPTION

### RICHARDSON FLAT - OUT PARCEL 1 JANUARY 15, 2002

A parcel of land located in the north half of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point South  $00^{\circ}44'33''$  East 2315.11 feet along section line and West 2124.91 feet from the northeast corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North  $32^{\circ}35'26''$  West 1843.40 feet to a point on the southerly right-of-way line of Highway U-189; thence along the southerly right-of-way line of Highway U-189 the following six (6) courses: 1) South  $81^{\circ}29'38''$  East 463.60 feet to a right-of-way monument; thence 2) South  $78^{\circ}57'52''$  East 621.18 feet to a right-of-way monument; thence 3) South  $85^{\circ}29'09''$  East 193.03 feet to a right-of-way monument; thence 4) North  $88^{\circ}34'36''$  East 541.40 feet to a right of way monument; thence 5) South  $87^{\circ}45'58''$  East 300.64 feet to a right-of-way monument; thence 6) 379.70 feet along the arc of a 1679.86 foot radius curve to the right (chord bears South  $78^{\circ}04'35''$  East 378.90 feet) to a right-of-way monument located on the Summit-Wasatch County line; thence along the Summit-Wasatch County line South  $15^{\circ}43'12''$  East 622.62 feet; thence along the Summit-Wasatch County line South  $30^{\circ}02'07''$  West 491.28 feet to county monument 137; thence along the Summit-Wasatch County line South  $07^{\circ}49'47''$  East 581.46 feet; thence along the south line of the northeast quarter of Section 1 North  $89^{\circ}50'21''$  West 1722.59 feet; thence North  $36^{\circ}45'45''$  East 401.85 feet to the point of beginning.

Description contains 74.73 acres, more or less.

## LEGAL DESCRIPTION

### RICHARDSON FLAT – OUT PARCEL 2 JANUARY 15, 2002

A parcel of land located in the southwest quarter of Section 1 and the northwest quarter of Section 12, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at the southwest corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along section line North 00°34'37" East 1086.22 feet; thence North 49°29'05" East 912.70 feet; thence South 82°38'01" East 1191.60 feet; thence North 27°48'26" East 924.31 feet; thence North 77°35'22" East 374.90 feet to a point on the center of section line of Section 1; thence along the center of section line South 00°43'31" West 2447.74 feet to the south quarter corner of Section 1; thence along the section line North 89°30'05" West 1326.50 feet; thence along the east line of the northwest quarter of the northwest quarter of Section 12 South 00°41'29" East 1332.41 feet; thence along the south line of the northwest quarter of the northwest quarter of Section 12 North 89°23'28" West 1347.55 feet; thence along the west line of the northwest quarter of the northwest quarter of Section 12 North 00°12'46" East 1329.54 feet to the point of beginning..

Description contains 145.53 acres, more or less.

## LEGAL DESCRIPTION

### RICHARDSON FLAT - OUT PARCEL 3 JANUARY 23, 2002

A parcel of land located in the east half of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point North 00°34'37" East 1327.23 feet along section line and West 188.10 feet from the southeast corner of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South 89°58'53" West 1416.79 feet; thence North 07°04'10" West 208.38 feet; thence North 07°06'20" West 464.53 feet; thence North 07°04'14" West 492.61 feet; thence North 39°05'22" East 21.44 feet; thence North 31°21'06" East 461.52 feet; thence North 55°45'19" West 402.33 feet; thence North 07°03'24" West 92.50 feet; thence North 33°36'01" East 1081.60 feet; thence East 119.21 feet to a point on a 1482.41 foot radius curve to the left; thence southeasterly along the arc of said curve 466.75 feet (chord bears South 10°55'03" East 464.83 feet); thence South 19°56'15" East 2478.15 feet to the point of beginning.

Description contains 60.06 acres, more or less.

Z:\UPCMC\RICHARDSON\DOCS\OP3.DOC



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

FILE COPY

APR - 4 2002

Mr. Kerry Gee  
Vice President  
United Park City Mines  
PO Box 1450  
Park City, UT 84060

Dear Kerry:

In several recent letters to EPA, you requested comfort letters for three parcels owned by United Park City Mines. These parcels are located in the vicinity of the Richardson Flats Tailings Site in Summit County, Utah. Your request was based on data obtained during the Remedial Investigation/Focused Feasibility Study which United Park City Mines (UPCM) is performing under agreement with EPA. This response is based upon the data currently available to EPA and is provided for informational purposes only. EPA does not have the authority to compromise a claim, only the United States Department of Justice has the jurisdiction to issue a "no-action assurance."

The parcels in question, described as Out Parcels 1, 2, and 3 in the attached property descriptions, do not appear to be impacted by contamination related to the Richardson Flats Site to any significant degree and, as such, there are no response actions planned for the parcels at this time. Unless significant new information becomes available, EPA has no further interest in these parcels and does not consider them part of the Richardson Flats Site. This letter and supporting documentation will become part of the Administrative Record for the Richardson Flats Tailings Site.

If you have any questions, please contact me directly at (303) 312-6748

Sincerely,

Jim Christiansen  
Remedial Project Manager

Attachment

CC: Muhammed Slam, Utah Department of Environmental Quality.



Printed on Recycled Paper

## LEGAL DESCRIPTION

RICHARDSON FLAT - OUT PARCEL 1  
JANUARY 15, 2001

A parcel of land located in the north half of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point South  $00^{\circ}44'33''$  East 2315.11 feet along section line and West 2124.91 feet from the northeast corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North  $32^{\circ}35'26''$  West 1843.40 feet to a point on the southerly right-of-way line of Highway U-189; thence along the southerly right-of-way line of Highway U-189 the following six (6) courses: 1) South  $81^{\circ}29'38''$  East 463.60 feet to a right-of-way monument; thence 2) South  $78^{\circ}57'52''$  East 621.18 feet to a right-of-way monument; thence 3) South  $85^{\circ}29'09''$  East 193.03 feet to a right-of-way monument; thence 4) North  $88^{\circ}34'36''$  East 541.40 feet to a right of way monument; thence 5) South  $87^{\circ}45'58''$  East 300.64 feet to a right-of-way monument; thence 6) 379.70 feet along the arc of a 1679.86 foot radius curve to the right (chord bears South  $78^{\circ}04'35''$  East 378.90 feet) to a right-of-way monument located on the Summit-Wasatch County line; thence along the Summit-Wasatch County line South  $15^{\circ}43'12''$  East 622.62 feet; thence along the Summit-Wasatch County line South  $30^{\circ}02'07''$  West 491.28 feet to county monument 137; thence along the Summit-Wasatch County line South  $07^{\circ}49'47''$  East 581.46 feet; thence along the south line of the northeast quarter of Section 1 North  $89^{\circ}50'21''$  West 1722.59 feet; thence North  $36^{\circ}45'45''$  East 401.85 feet to the point of beginning.

Description contains 74.73 acres, more or less.

Z:\UPCMC\RICHARDSON\DOCS\OPI.DOC

**LEGAL DESCRIPTION****RICHARDSON FLAT – OUT PARCEL 2  
JANUARY 15, 2001**

A parcel of land located in the southwest quarter of Section 1 and the northwest quarter of Section 12, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at the southwest corner of Section 1, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along section line North  $00^{\circ}34'37''$  East 1086.22 feet; thence North  $49^{\circ}29'05''$  East 912.70 feet; thence South  $82^{\circ}38'01''$  East 1191.60 feet; thence North  $27^{\circ}48'26''$  East 924.31 feet; thence North  $77^{\circ}35'22''$  East 374.90 feet to a point on the center of section line of Section 1; thence along the center of section line South  $00^{\circ}43'31''$  West 2447.74 feet to the south quarter corner of Section 1; thence along the section line North  $89^{\circ}30'05''$  West 1326.50 feet; thence along the east line of the northwest quarter of the northwest quarter of Section 12 South  $00^{\circ}41'29''$  East 1332.41 feet; thence along the south line of the northwest quarter of the northwest quarter of Section 12 North  $89^{\circ}23'28''$  West 1347.55 feet; thence along the west line of the northwest quarter of the northwest quarter of Section 12 North  $00^{\circ}12'46''$  East 1329.54 feet to the point of beginning..

Description contains 145.53 acres, more or less.

ZAUPCMCRICHARDSONDOCSOP2.DOC

LEGAL DESCRIPTION  
RICHARDSON FLAT - OUT PARCEL 3  
JANUARY 15, 2001

A parcel of land located in the east half of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point North 00°34'37" East 1327.29 feet along section line from the southeast corner of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian; thence South 89°58'53" West 1604.89 feet; thence North 07°04'10" West 208.38 feet; thence North 07°06'20" West 464.53 feet; thence North 07°04'14" West 492.61 feet; thence North 39°05'22" East 21.44 feet; thence North 31°21'06" East 461.52 feet; thence North 55°45'19" West 402.33 feet; thence North 07°03'24" West 92.50 feet; thence North 33°36'01" East 1081.60 feet; thence East 119.21 feet to a point on a 1482.41 foot radius curve to the left; thence southeasterly along the arc of said curve 466.75 feet (chord bears South 10°55'03" East 464.83 feet); thence South 19°56'15" East 1193.65 feet; thence South 75°35'21" East 420.76 feet; thence South 26°05'54" East 511.61 feet; thence South 00°34'37" West 643.33 feet to the point of beginning.

Description contains 69.26 acres, more or less.

Z:\UPCMC\RICHARDSON\DOCS\OP1.DOC

**FACSIMILE COVER SHEET**

<b>TO:</b>	Laurin Murray	
<b>COMPANY:</b>	E	
<b>FAX:</b>	359-9256	
<b>FROM:</b>		
<b>PHONE:</b>	(435) 649-8011	
<b>FAX #</b>	(435) 649-8035	
<b>PAGES INCLUDING COVER PAGE:</b>		

**COMMENTS:**



~~March 21,~~ April 8, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

May  
with  
5-5-06  
letter

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

UNITED PARK CITY MINES COMPANY, and  
ATLANTIC RICHFIELD COMPANY, and

Civil Action No.

NORANDA INC.,

*Defendants.*

RD/RA CONSENT DECREE

6-2-06

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## I. BACKGROUND

- A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.
- B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, together with accrued interest; and (2) performance of studies and response ~~work~~actions by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").
- C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA notified the State of Utah (the "State") on February 16, 2006 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.
- D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service on February 16, 2006 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.
- E. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that ~~thea~~ release or threatened release of hazardous substances that may have occurred at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.
- F. The Site was originally proposed for inclusion on the National Priorities List ("NPL") on June 24, 1988. Due to scoring issues and comments received from Settling Defendant and others during the public comment period, the Site was removed from NPL consideration in February 1991. The Site was re-proposed for the NPL on February 7, 1992. No action has been taken with regard to this proposed listing.
- G. Settling Defendant entered into an Administrative Order on Consent on September 28, 2000 which called for Settling Defendant to conduct a Focused Remedial Investigation and Focused Feasibility Study ~~("RI/FFS")~~ for the Site.
- H. Settling Defendant completed its Focused Remedial Investigation ("RI") Report and its Focused Feasibility Study Report on September 2, 2004.
- I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a proposed plan for remedial action on September 4, 2004 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public

on the proposed plan for remedial action and conducted a public meeting on September 28, 2004. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

- J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on July 6, 2005, with which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments.
- K. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.
- L. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.
- M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.
- N. Settling Defendant has resolved its liability for Plaintiff's Past Response Costs (as defined below) relating to the Site pursuant to a separate Consent Decree.
- O. ~~N.~~ The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION**

- 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant ~~shall agree~~ not to challenge the validity of the terms of and conditions set forth in this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

- 2. This Consent Decree applies to and is binding upon, and inures to the benefit of, the United States and Settling Defendant, including Settling Defendant's successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but

not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible ~~for ensuring to use all means available at law to ensure~~ that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX. APPENDICES). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, State, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, State or Federal holiday, the period shall run until the close of business of the next Working Day.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 102.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs on or after March 1, 2006 through such time as EPA issues the Certification of Completion of the Remedial Action (as provided in

Article XIV) that relate to (i) negotiating this Consent Decree; (ii) reviewing or developing plans, reports and other items pursuant to this Consent Decree; (iii) verifying the Work; or (iv) otherwise implementing, overseeing, or enforcing this Consent Decree, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Remedial Design/Remedial Action Work Plan.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 12 of the ROD.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on July 6, 2005, by the Regional Administrator, EPA Region VIII, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the ROD, in accordance with the Remedial Design/Remedial Action Work Plan and other plans approved by EPA.

“Remedial Design/Remedial Action Work Plan” shall mean the document developed pursuant ~~referred to in Paragraph 11 of this Consent Decree and approved by EPA,~~ and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean United Park City Mines Company, its successors and assigns.

“Site” shall mean the Richardson Flat Tailings Site, which is located approximately 1.5 miles northeast of Park City, Utah ~~and is part of a 650-acre property owned by Settling Defendant.~~ The Site is at the location of a mine tailings impoundment that covers 160 acres in the northwest corner of Settling Defendant’s property and includes diversion ditches, wetlands, and other features. The EPA Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) Site Identification Number is UTD980952840. The Site is depicted generally on the map attached as Appendix B.

“State” shall mean the State of Utah.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXV. RETENTION OF RECORDS.

## V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant, to reimburse Future Response Costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant (except Plaintiff’s claim for Past Response Costs) as provided in this Consent Decree.
6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant



shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the Remedial Design/Remedial Action Work Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.
8. Permits
  - a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit, including without limitation any permit required by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
  - b) The Settling Defendant may seek relief under the provisions of Section XVIII. FORCE MAJEURE of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.
  - c) This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.
9. Notice to Successors-in-Title
  - a) Within 30 days after the entry of this Consent Decree, Settling Defendant shall file with the Recorder's Office, Summit County, State of Utah, notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on July 6, 2005, and that ~~potentially responsible parties have~~ Settling Defendant has entered into a Consent Decree requiring implementation of the remedy. Such notice shall be in substantially the same form as that attached hereto as Appendix C. Settling Defendant shall provide EPA with a certified copy of the recorded notice within 30 days of recording such notice.
  - b) At least 21 days prior to the conveyance of any interest in property located within the ~~Site~~ area described in Appendix C, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any

instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS, and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS. Such notice shall be in substantially the same form as that attached hereto as Appendix D. In lieu of the foregoing, Settling Defendant may record (i) the Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS, and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX. ACCESS AND INSTITUTIONAL CONTROLS with the Recorder's Office, Summit County, State of Utah.

- c) At least 21 days prior to such conveyance, the Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.
- d) In the event of any such conveyance, Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant, unless otherwise agreed to in writing by EPA. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

#### **VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANT**

##### **10. Selection of Supervising Contractor**

- a) All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANT, VII. REMEDY REVIEW, VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS, and XV. EMERGENCY RESPONSE of this Consent Decree shall be under the direction and supervision of the Supervising Contractor. EPA hereby approves ~~United Park City Mines Company's~~ Kerry Gee, an officer of Settling Defendant, as the Supervising Contractor.

- b) If at any time, Settling Defendant proposes to change its Supervising Contractor, Settling Defendant shall give notice of the proposal to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. Approval of a new Supervising Contractor shall not be unreasonably withheld.
- c) If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.
- d) If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in this Consent Decree or in a plan approved by EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XIX. DISPUTE RESOLUTION of this Consent Decree.

11. Work Plans and Deliverables

- a) Remedial Design/Remedial Action Work Plan. The Remedial Design/Remedial Action Work Plan attached hereto as Appendix E, including all of its separate attachments, is hereby approved and accepted by EPA. Any action or requirement in the Remedial Design/Remedial Action Work Plan (including its attachments) may be modified pursuant to Paragraph 12 without modifying this Consent Decree. The Remedial Design/Remedial Action Work Plan is incorporated into and is enforceable under this Consent Decree.

12. Modification of the Remedial Design/Remedial Action Work Plan

- a) If EPA determines that modification to the work specified in the Remedial Design/Remedial Action Work Plan is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require by written demand that such modification be incorporated into the Remedial Design/Remedial Action Work Plan; provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the ROD.
- b) If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX. DISPUTE RESOLUTION, Paragraph 65 (record review). The

Remedial Design/Remedial Action Work Plan shall be modified in accordance with final resolution of the dispute.

- c) Settling Defendant shall implement any work required by any modifications incorporated in the Remedial Design/Remedial Action Work Plan in accordance with this Paragraph, except that to the extent that such modification(s) constitute a further response action, Settling Defendant's obligation to perform such work will be subject to Paragraph 18, below.
  - d) If Settling Defendant desires to deviate from the Remedial Design/Remedial Action Work Plan, or any schedule or plan relating thereto, Settling Defendant may not proceed with the requested deviation until receiving ~~written~~ approval from EPA.
  - e) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.
13. Settling Defendant acknowledges and agrees that nothing in this Consent Decree or the Remedial Design/Remedial Action Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the Remedial Design/Remedial Action Work Plan will achieve the Performance Standards.
14. Off-site Shipments
- a) Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
    - i) Settling Defendant shall include in the written notification the following information, where available: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
    - ii) The identity of the receiving facility and state will be determined by Settling Defendant following the award of the contract for Remedial Action construction. Settling Defendant shall provide the information required by Paragraph 14(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

- b) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendant shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.
- c) Subject to ~~EPA-written approval by EPA (as described below)~~, Settling Defendant is authorized, until EPA issues the Certification of Completion of the Remedial Action (as provided in Article XIV), but not obligated, to accept mine waste (whether or not owned by Settling Defendant) at the Site from off-Site locations within the Silver Creek Watershed. As to each discrete source area of such material, Settling Defendant shall provide EPA's Project Coordinator with written or oral notification of ~~any shipment of its desire to accept mine waste or similar impacted material~~ to the Site, and ~~agrees to await EPA's written approval, before acceptance of any such shipment, before placing any such material~~ at the Site. The provisions of this subparagraph do not apply to clean materials.

## VII. REMEDY REVIEW

- 15. Periodic Review. Settling Defendant shall conduct studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.
- 16. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.
- 17. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.
- 18. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, Settling Defendant shall undertake such further response actions but only to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIX. DISPUTE RESOLUTION to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI. COVENANTS NOT TO SUE BY PLAINTIFF are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of

the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 65 (record review).

19. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 18, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

### VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

20. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples taken in connection with any work performed pursuant to this Consent Decree in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the Remedial Design/Remedial Action Work Plan, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall allow EPA personnel and its authorized representatives access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall require that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall require that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendant shall require that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under

the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall require that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

21. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendant's implementation of the Work.
22. Settling Defendant shall submit to EPA copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.
23. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

#### **IX. ACCESS AND INSTITUTIONAL CONTROLS**

24. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by the Settling Defendant, such Settling Defendant shall:
  - a) commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:
    - i) Monitoring the Work;
    - ii) Verifying any data or information submitted to the United States;
    - iii) Conducting investigations relating to contamination at or near the Site;
    - iv) Obtaining samples;
    - v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
    - vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

- vii) Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;
  - viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with XXIV. ACCESS TO INFORMATION;
  - ix) Assessing Settling Defendant's compliance with this Consent Decree; and
  - x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
- b) commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; ~~and~~
- c) execute and record in the Recorder's Office of Summit County, State of Utah, an easement, running with the land, that (i) grants EPA a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24(a) of this Consent Decree, and (ii) grants EPA the right to enforce the land/water use restrictions listed in Paragraph 24(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree.
- d) ~~Settling Defendant shall, within 45 days of entry of this Consent Decree~~ the Effective Date, submit to EPA for review and approval, with respect to such property:
- i) A draft easement, in substantially the form attached hereto as Appendix F, that is enforceable under the laws of the State of Utah, and
  - ii) A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).
- e) Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office of Summit County. Within 30 days of recording the easement, Settling Defendant shall



provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use its best efforts to secure from such persons:
- a) an agreement to provide access thereto for Settling Defendant, the United States and its representatives, including EPA and its contractors, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24(a) of this Consent Decree;
  - b) an agreement, enforceable by Settling Defendant and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and
  - c) the execution and recordation in the Recorder's Office of Summit County, State of Utah, of an easement, running with the land, that (i) grants EPA a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24(a) of this Consent Decree, and (ii) grants EPA the right to enforce the land/water use restrictions listed in Paragraph 24(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree.
  - d) Within 45 days of entry of this Consent Decree, Settling Defendant shall submit to EPA for review and approval with respect to such property:
    - i) A draft easement, in substantially the form attached hereto as Appendix F, that is enforceable under the laws of the State of Utah, and
    - ii) A current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).
  - e) Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined

that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office of Summit County. Within 30 days of recording the easement, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

26. For the purposes of Paragraphs 24 and 25 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 25(a) or 25(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) or any access easements or restrictive easements required by Paragraph 25(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 24(c)(1) or Paragraph 25(c)(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this consent decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant have taken to attempt to comply with Paragraph 24 or 25 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI. PAYMENTS FOR RESPONSE COSTS, for all reasonable costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.
27. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.
28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

**X. REPORTING REQUIREMENTS**

29. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State copies of written quarterly progress reports that:
- a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous three months;
  - b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous three months;
  - c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous three months;
  - d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next three months and provide other information relating to the progress of construction.
  - e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
  - f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and
  - g) describe all activities undertaken in support of the Community Relations Plan during the previous three months and those to be undertaken in the next three months. Settling Defendant shall submit these progress reports to EPA and the State by the ~~10~~20<sup>th</sup> of each April, July, October, and January following the lodging of this Consent Decree until EPA notifies Settling Defendant pursuant to Paragraph 49(b) of Section XIV. CERTIFICATION OF COMPLETION. If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.
30. Settling Defendant shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.
31. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of its first becoming aware of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA

Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 8, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within 20 days of Settling Defendant first becoming aware of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.
33. Settling Defendant shall submit copies of all plans, reports, and data required by the Remedial Design/Remedial Action Work Plan or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit copies of all such plans, reports and data to the State. Upon request by EPA Settling Defendant shall submit in electronic form all portions of any report or other deliverable Settling Defendant is required to submit pursuant to the provisions of this Consent Decree.
34. All reports and other documents submitted by Settling Defendant to EPA (other than the quarterly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

#### **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35 (a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX. DISPUTE RESOLUTION with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35 (c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX. STIPULATED PENALTIES.

37. Resubmission of Plans

- a) Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendant shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in XX. STIPULATED PENALTIES, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect.
- b) Notwithstanding the receipt of such notice, Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XX. STIPULATED PENALTIES.
- c) In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX. DISPUTE RESOLUTION.
- d) If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendant invokes the dispute resolution procedures set forth in Section XIX. DISPUTE RESOLUTION and EPA's action is overturned pursuant to that Section. The provisions of Section XIX. DISPUTE RESOLUTION and Section XX. STIPULATED PENALTIES shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX. STIPULATED PENALTIES.

38. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

**XII. PROJECT COORDINATORS**

39. EPA hereby designates Peggy ~~Churchhill~~Churchill as its Project Coordinator and ~~Kathleen~~Kathryn Hernandez as its Alternate Project Coordinator. Settling Defendant hereby designates, and EPA approves, Kerry Gee as its Project Coordinator. If a Project

Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Party at least 5 working days before the change occurs unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may, however, assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

40. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.
41. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet, at a minimum, on a quarterly basis.

### **XIII. PERFORMANCE GUARANTEE**

42. In order to ensure the full and final completion of the Work, Settling Defendant shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$4,262,729.65 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:
  - a) A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
  - b) One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;
  - c) A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;
  - d) A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue

insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

- e) A demonstration by ~~one or more Settling Defendants that each such~~ Settling Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or
- f) A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with ~~at least one~~ Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

43. **[For initial guarantees under subsections a, b, c, d, or f:]** Settling Defendant(s) ~~have~~ has selected, and EPA has approved, as an initial Performance Guarantee **[insert type(s)]** pursuant to Paragraph \_\_\_\_\_, in the form attached hereto as Appendix \_\_\_\_\_. Within ten days after entry of this Consent Decree, Settling Defendant(s) shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix \_\_\_\_\_, and such Performance Guarantee(s) shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, Settling Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree[, with a copy to **[insert name, title, and address of Regional financial assurance specialist, if one exists in the relevant Region]**] and to the United States and EPA [and the State] as specified in Section XXVI. **[Alternative 46.2. For initial guarantees under subsection e:]** Settling Defendant(s) ~~have~~ has selected, and EPA has approved, as an initial Performance Guarantee a demonstration of satisfaction of financial test criteria pursuant to Paragraph \_\_\_\_\_ ~~with respect to [list corporations making the guarantee if less than all Settling Defendants].~~

44. If at any time during the effective period of this Consent Decree, the Settling Defendant(s) ~~provide~~ provides a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph \_\_\_\_\_ or Paragraph \_\_\_\_\_ above, ~~such the~~ Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified

public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

45. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendant(s), within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph \_\_\_\_ of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 50(b)(ii) of this Consent Decree. Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant(s) to complete the Work in strict accordance with the terms hereof.
46. The commencement of any Work Takeover pursuant to Paragraph \_\_\_\_ of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph \_\_\_\_\_, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 46.1(e), Settling Defendant(s) shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.
47. Modification of Amount and/or Form of Performance Guarantee



- a) Reduction of Amount of Performance Guarantee. If Settling Defendant(s) believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph .1 above, Settling Defendant(s) may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Defendant(s) shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 50(b)(ii) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendant(s) of such decision in writing. After receiving EPA's written acceptance, Settling Defendant(s) may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendant(s) may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 48 or 50(b) of this Consent Decree.
- b) Change of Form of Performance Guarantee
- i) If, after entry of this Consent Decree, Settling Defendant(s) desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendant(s) may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 50(b)(ii) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant(s) pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.
- ii) Settling Defendant(s) shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendant(s) shall submit such

proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree[, with a copy to **[insert name, title, and address of Regional financial assurance specialist, if one exists in the relevant Region]]**. EPA shall notify Settling Defendant(s) in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendant(s) shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree[, with a copy to **[insert name, title, and address of Regional financial assurance specialist, if one exists in the relevant Region]]** and to the United States and EPA [and the State] as specified in Section XXVI.

- c) Release of Performance Guarantee. If Settling Defendant(s) receive written notice from EPA in accordance with Paragraph [51] hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendant(s) in writing, Settling Defendant(s) may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendant(s) shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendant(s) may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

#### XIV. CERTIFICATION OF COMPLETION

48. Completion of the Remedial Action

- a) Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall within 30 days of the

inspection submit a written report to EPA, with a copy to the State, pursuant to XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS requesting certification of completion of the Remedial Action. In the report, a registered professional engineer or geologist and Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Remedial Design/Remedial Action Work Plan or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS. Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX. DISPUTE RESOLUTION.

- b) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI. COVENANTS NOT TO SUE BY PLAINTIFF. Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

49. Completion of the Work

- a) Within 90 days after Settling Defendant concludes that all phases of the Work (excluding perpetual O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer or geologist stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may require Settling Defendant to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Remedial Design/Remedial Action Work Plan or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS. Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX. DISPUTE RESOLUTION.

- b) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendant in writing.

#### **XV. EMERGENCY RESPONSE**

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and

shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendant shall notify the EPA National Response Center at 1-800-424-8802. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the Remedial Design/Remedial Action Work Plan. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section **XVI. PAYMENTS FOR RESPONSE COSTS**.

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section **XXI. COVENANTS NOT TO SUE BY PLAINTIFF**.

#### **XVI. PAYMENTS FOR RESPONSE COSTS**

52. **Payments for Future Response Costs**

- a) Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendant a bill requiring payment that includes a regionally prepared financial summary, which shall serve as the basis for payment demands. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 53. Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 0894, and DOJ Case Number 90-11-3-08764. Settling Defendant shall send the check(s) to:

**Regular Mail:**

Mellon Bank  
EPA Region 8  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, PA 15251-6859

**Express Mail:**

EPA 360859

Mellon Client Service Center, Room 670  
500 Ross Street  
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

- b) At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with XXVI. NOTICES AND SUBMISSIONS.
  - c) The total amount to be paid by Settling Defendant pursuant to Subparagraph 52(a) shall be deposited in the Richardson Flat Tailings Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
53. Settling Defendant may contest payment of any Future Response Costs under Paragraph 52 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to XXVI. NOTICES AND SUBMISSIONS. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 52. Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendant shall send to the United States, as provided in XXVI. NOTICES AND SUBMISSIONS, a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in XIX. DISPUTE RESOLUTION. If the United States prevails in the dispute, within 15 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 52. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to the United States in the manner described in Paragraph 52; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX. DISPUTE RESOLUTION shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by Paragraph 52 are not made within 30 days of Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 69. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 52.

## XVII. INDEMNIFICATION AND INSURANCE

55. Settling Defendant's Indemnification of the United States

- a) The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs the United States incurs including, but not limited to, reasonable attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf and under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States.
- b) The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph and shall consult with Settling Defendant prior to settling such claim.
56. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and

all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

57. No later than 15 days before commencing any on-Site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 48(b) of Section XIV. CERTIFICATION OF COMPLETION, comprehensive general liability insurance with limits of one (1) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XVIII. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.
59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region VIII, within five days of when Settling Defendant first knew that the event might cause a delay. Within twenty days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to



prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
61. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section **XIX. DISPUTE RESOLUTION**, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 58 and 59, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

### **XIX. DISPUTE RESOLUTION**

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.
63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises,

unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

64. Statements of Position

- a) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 65 or Paragraph 66.
- b) Within 21 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or Paragraph 66. Within seven days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.
- c) If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 65 or Paragraph 66, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 65 or Paragraph 66.

65. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

- a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted

pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

- b) The Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 65(a). This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 65(c) and (d).
  - c) Any administrative decision made by EPA pursuant to Paragraph 65(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within 14 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.
  - d) In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 65(a).
66. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.
- a) Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 64, the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final decision resolving the dispute. The decision of the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation shall be binding on the Settling Defendant unless, within 14 days of receipt of the decision, the Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.
  - b) Notwithstanding Paragraph M of Section I. BACKGROUND of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

67. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 75. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX. STIPULATED PENALTIES.

## XX. STIPULATED PENALTIES

68. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69 and 70 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII. FORCE MAJEURE or Paragraph 78. "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the Remedial Design/Remedial Action Work Plan, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. Stipulated Penalty Amounts - Work

- a) The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 69(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

70. Stipulated Penalty Amounts - Reports

- a) The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Section X. REPORTING REQUIREMENTS:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 150	1st through 14th day
\$ 250	15th through 30th day

\$ 500

31st day and beyond

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS, during the period, if any, beginning on the day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, under Paragraph 65(b) or 66(a) of Section XIX. DISPUTE RESOLUTION, during the period, if any, beginning on the day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX. DISPUTE RESOLUTION, during the period, if any, beginning on the day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.
72. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA ~~may~~will give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.
73. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIX. DISPUTE RESOLUTION. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, EPA Region 8, Attn: Superfund Accounting, Lockbox 360859, Pittsburgh, Pennsylvania 15251-6859, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 0894, the DOJ Case Number 90-11-3-08764, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in XXVI. NOTICES AND SUBMISSIONS.
74. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.
75. Penalties shall continue to accrue as provided in Paragraph 71 during any dispute resolution period, but need not be paid until the following:

- a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 30 days of the agreement or the receipt of EPA's decision or order;
  - b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;
  - c) If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.
76. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72.
77. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.
78. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### XXI. COVENANTS NOT TO SUE BY PLAINTIFF

79. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraph 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant and its officers, directors or employees (to the extent that the liability of such officers, directors, or employees arises solely from their status as officers, directors, or employees) pursuant to (i) Sections 106, 107(a), or 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or 9613(f); and (ii) Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928, or 6973, 6973; or (iii) Sections 309(b), 311, or 504 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321, or 1364, relating to the Site- or to the Work. These covenants ~~not to sue~~ will take effect as of the Effective Date. These covenants are conditioned upon

~~the Settling Defendant's~~ satisfactory performance ~~by Settling Defendant~~ of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

80. The covenants not to sue set forth in this Section shall inure to the benefit of Settling Defendant and its successors and assigns, and shall be binding upon and enforceable against the United States.
81. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant:
- a) ~~to perform further response actions relating to the Site, or~~
  - b) ~~to reimburse the United States for additional costs of response (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response, if, prior to Certification of Completion of the Remedial Action:~~
    - i) conditions at the Site, previously unknown to EPA, are discovered, or
    - ii) information, previously unknown to EPA, is received, in whole or in part; and
    - ii) ~~information, previously unknown to EPA, is received, in whole or in part, and~~ EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.
82. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant:
- a) ~~to perform further response actions relating to the Site, or~~
  - b) ~~to reimburse the United States for additional costs of response (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response, if, subsequent to Certification of Completion of the Remedial Action:~~
    - i) conditions at the Site, previously unknown to EPA, are discovered, or

- ii) information, previously unknown to EPA, is received, in whole or in part, ~~and~~; and

EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include ~~only that the~~ information and ~~those~~ conditions known to EPA as of the date ~~the ROD was signed and this Consent Decree is lodged with the U.S. District Court, or~~ reasonably foreseeable at that time, as set forth in the ~~Record of Decision for the Site and~~ ROD or otherwise in the administrative record supporting the Record of Decision ~~as of that date~~. For purposes of Paragraph ~~81.a)~~ 82, the information and the conditions known to EPA shall include ~~only that the~~ information and ~~those~~ conditions known to EPA as of the date of Certification of Completion of the Remedial Action ~~and, or reasonably foreseeable at that time, as set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD or otherwise in the administrative record, or in~~ as of that date, including any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.
84. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:
- a) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
  - b) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
  - c) liability based upon the Settling Defendant's ~~ownership or operation of the Site, or upon the Settling Defendant's~~ transportation, treatment, storage, or disposal, or ~~the Settling Defendant's~~ arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, as part of the Work, or as otherwise ordered approved by EPA, after signature of pursuant to this Consent Decree ~~by~~, after the date that Settling Defendant executes this Consent Decree;



- d) liability for damages for injury to, destruction of, or loss of natural resources under federal trusteeship, and for the costs of any natural resource damage assessments relating to such damages;
  - e) criminal liability;
  - f) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
  - g) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 12 (Modification of the Remedial Design/Remedial Action Work Plan or related plans); and
  - h) liability for ~~response costs that are not within the definition of~~ Past Response Costs (e.g. ~~past response costs~~).
85. Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XIX. DISPUTE RESOLUTION, Paragraph 65, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVI. PAYMENTS FOR RESPONSE COSTS.
86. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXII. COVENANTS BY SETTLING DEFENDANT**

87. Covenant Not to Sue. Subject to the reservations in Paragraph 88, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:
- a) any direct or indirect claim for reimbursement for costs of performing the Work or the payment of Future Response Costs from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

- b) any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 90 (Waiver of Claims Against *De Micromis* Parties) and Paragraph 94 (Waiver of Claim Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 81, 82, 84 (b) – (d) or 84 (g) – (h), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

- 88. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.
- 89. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).
- 90. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:
  - a) the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

- b) This waiver shall not apply to any claim or cause of action Settling Defendant may have against the Atlantic Richfield Corporation, ASARCO, Park City Ventures, Noranda, or any entities related thereto, or against any person meeting the above criteria if EPA has otherwise determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

**XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

91. Except as provided in Paragraph 90 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 90 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.
92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For purposes of this Consent Decree, "matters addressed in this Consent Decree" are defined as all response actions taken or to be taken, and all response costs incurred or to be incurred by the United States or any other person, with respect to the Site. ~~The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations. Only as between Settling Defendant and the United States, "matters addressed" does not include claims that have been reserved pursuant to Paragraphs 81, 82, or 84.~~
93. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than 30 days prior to the initiation of such suit or claim. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States within 14 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 14 days of service or receipt of any Motion for Summary Judgment and within 14 days of receipt of any order from a court setting a case for trial. Notwithstanding the foregoing, no failure to provide notice to the United States shall compromise or abrogate the protections provided by Paragraph 92 above.

94. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claimsplitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI. COVENANTS NOT TO SUE BY PLAINTIFF.

#### XXIV. ACCESS TO INFORMATION

95. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
96. Business Confidential and Privileged Documents
- a) Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.
  - b) Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXV. RETENTION OF RECORDS

98. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 49(b) of Section XIV. CERTIFICATION OF COMPLETION, Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
99. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.
100. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

101. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.


As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-08764

And

Assistant Regional Administrator 8 EPR  
United States Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

As to EPA:

 Peggy Churchill  
EPA Project Coordinator  
United States Environmental Protection Agency, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

With a copy to:

Maureen O'Reilly  
EPA Enforcement Specialist  
Richardson Flat Superfund Site  
United States Environmental Protection Agency, Region 8  
Suite 300 (8ENF-RC)  
999 18<sup>th</sup> Street  
Denver, CO 80202-2466

As to the Regional Financial Management Officer:

Regional Financial Management Office 8TMS-F  
United States Environmental Protection Agency, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

**As to Settling Defendant:**

United Park City Mines Company  
Attn: Kerry Gee  
P.O. Box 1450  
Park City, Utah 84060

With a copy to:

~~Mabey Murray LC~~  
Chapman and Cutler LLP  
Attn: Kevin R. Murray, Esq.  
1000 Kearns Bldg.  
136 South Main Street  
Salt Lake City, Utah 84104-1645

**XXVII. EFFECTIVE DATE**

102. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXVIII. RETENTION OF JURISDICTION**

103. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX. DISPUTE RESOLUTION hereof.

**XXIX. APPENDICES**

104. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is a map of the Site.

“Appendix C” is the notice to successors-in-title.

“Appendix D” is the notice to prospective purchasers.

“Appendix E” is the Remedial Design/Remedial Action Work Plan.

“Appendix F” is the draft easement referenced in Paragraphs 24(d) and 25(d).

**XXX. COMMUNITY RELATIONS**

105. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

**XXXI. MODIFICATION**

106. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendant. All such modifications shall be made in writing.
107. Except as provided in Paragraph 12 (Modification of the Remedial Design/Remedial Action Work Plan or related plans), no material modifications shall be made to the Remedial Design/Remedial Action Work Plan without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design/Remedial Action Work Plan that do not materially alter that document, or material modifications to the Remedial Design/Remedial Action Work Plan that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA and Settling Defendant.
108. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

**XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

109. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.



110. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXXIII. SIGNATORIES/SERVICE**

111. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.
112. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.
113. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

**XXXIV. FINAL JUDGMENT**

114. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.
115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Judge



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Company, et al., relating to the Richardson Flat Tailings Site.

**FOR THE UNITED STATES OF AMERICA:**

\_\_\_\_\_  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
Date

\_\_\_\_\_  
MARK C. ELMER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 Eighteenth Street  
North Tower, Suite 945  
Denver, CO 80202

\_\_\_\_\_  
Date

*new  
address*


STEPHEN J. SORENSON  
United States Attorney

\_\_\_\_\_  
[Name]  
Assistant United States Attorney  
District of Utah  
U.S. Department of Justice  
185 South State Street, Suite 400  
Salt Lake City, UT 84111

\_\_\_\_\_  
Date

\_\_\_\_\_  
ROBERT E. ROBERTS  
Regional Administrator, Region 8  
U.S. Environmental Protection Agency  
999 Eighteenth Street, Suite 300  
Denver, CO 80202

\_\_\_\_\_  
Date

MARGARET (PEGGY) LIVINGSTON  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

\_\_\_\_\_  
Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Company, et al., relating to the Richardson Flat Tailings Site.

**FOR UNITED PARK CITY MINES CO., INC.:**

\_\_\_\_\_  
Kerry Gee  
[Title]  
P.O. Box 1450  
Park City, Utah 84060

\_\_\_\_\_  
Date

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kevin R. Murray  
Counsel for United Park City Mines Co., Inc.  
~~Mabey Murray LC~~  
Chapman and Cutler LLP  
1000 Kearns Bldg.  
136 South Main Street  
Salt Lake City, Utah 84104-1645

Ph. Number: (801) 320-6700

Document comparison done by DeltaView on Monday, May 08, 2006 16:47:17

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Padding cell	

Redline Summary:		
No.	Change	Text
1-2	Change	"Government's First Draft" changed to "UPCM Second Draft"
3-4	Change	"March 21, 2006" changed to "April 8, 2006"
5	Deletion	MINES COMPANY,
6	Change	"ATLANTIC RICHFIELD" changed to "and ATLANTIC RICHFIELD"
7	Deletion	RICHFIELD COMPANY, and
8	Deletion	NORANDA INC.,
9	Insertion	,
10-11	Change	"DATA ANALYSIS 10" changed to "DATA ANALYSIS 11"
12-13	Change	"AND INSURANCE 27" changed to "AND INSURANCE 28"
14-15	Change	"STIPULATED PENALTIES32" changed to "STIPULATED PENALTIES33"
16-17	Change	"SETTLING DEFENDANT 37" changed to

		"SETTLING DEFENDANT 38"
18-19	Change	"OF RECORDS 40" changed to "OF RECORDS 41"
20-21	Change	"SUBMISSIONS 41" changed to "SUBMISSIONS 42"
22-23	Change	"APPENDICES 43" changed to "APPENDICES 44"
24-25	Change	"COMMUNITY RELATIONS 43" changed to "COMMUNITY RELATIONS 44"
26-27	Change	"PUBLIC COMMENT 44" changed to "PUBLIC COMMENT 45"
28-29	Change	"SIGNATORIES/SERVICE 44" changed to "SIGNATORIES/SERVICE 45"
30	Insertion	UPCM Second Draft
31	Insertion	April 8, 2006
32-33	Change	"and response work by the defendants" changed to "and response actions by the defendants"
34-35	Change	"acknowledge that the release or" changed to "acknowledge that a release or"
36	Change	"hazardous substances at or from" changed to "hazardous substances that...have occurred at or from"
37	Change	"to conduct a Remedial Investigation" changed to "to conduct a Focused Remedial Investigation"
38	Change	"Feasibility Study ("RI/FFS") for the Site." changed to "Feasibility Study for the Site."
39-40	Insertion	N. Settling Defendant has...separate Consent Decree.
41	Change	"The Parties" changed to "N. The Parties"
42-43	Change	"Settling Defendant shall not" changed to "Settling Defendant agrees not"
44	Change	"not challenge the" changed to "not to challenge the"
45	Change	"challenge the terms" changed to "challenge the validity of the terms"
46-47	Change	"terms of this Consent" changed to "terms and

		conditions set forth in this Consent"
48-49	Change	"responsible for ensuring that its contractors" changed to "responsible to use all...that its contractors"
50	Change	"Saturday, Sunday, or Federal holiday." changed to "Saturday, Sunday, State, or Federal holiday."
51	Change	"Saturday, Sunday, or Federal" changed to "Saturday, Sunday, State or Federal"
52	Insertion	"Past Response Costs"...costs through such date.
53-54	Change	"the document developed pursuant to" changed to "the document referred to"
55	Change	"to Paragraph 11" changed to "to in Paragraph 11"
56	Change	"Consent Decree and...EPA, and any amendments" changed to "Consent Decree and any amendments"
57	Change	"Park City, Utah and is...by Settling Defendant." changed to "Park City, Utah."
58-59	Change	"The Site is a tailings impoundment" changed to "The Site is the location...tailings impoundment"
60-61	Change	"impoundment that covers...The EPA Comprehensive" changed to "impoundment and includes... The EPA Comprehensive"
62-63	Change	"2005, and that...have entered into" changed to "2005, and that Settling...has entered into"
64-65	Change	"within the Site including," changed to "within the area described...Appendix C, including,"
66	Change	"hereby approves United...Company's Kerry Gee" changed to "hereby approves Kerry Gee"
67	Change	"Kerry Gee as the Supervising" changed to "Kerry Gee, an officer of...as the Supervising"
68-69	Change	"Action Work Plan, provided, however," changed to "Action Work Plan; provided, however,"
70-71	Change	"this Paragraph.d) If Settling" changed to "this Paragraph, except...18, below.d) If Settling"
72	Change	"until receiving written approval from" changed to "until receiving approval from"



73	Change	"c) Subject to EPA written approval" changed to "c) Subject to written approval"
74	Change	"written approval, Settling Defendant" changed to "written approval by EPA...Settling Defendant"
75	Change	"mine waste at the Site" changed to "mine waste (whether or...Defendant) at the Site"
76	Change	"Creek Watershed. Settling Defendant" changed to "Creek Watershed. As to...Settling Defendant"
77-78	Change	"notification of any shipment of mine waste" changed to "notification of its desire to accept mine waste"
79	Change	"mine waste to the Site," changed to "mine waste or similar...material to the Site,"
80	Change	"the Site, and await EPA's" changed to "the Site, and agrees to await EPA's"
81-82	Change	"written approval, before...of any such shipment." changed to "written approval before...to clean materials."
83-84	Change	"Consent Decree;b) commencing" changed to "Consent Decree.b) commencing"
85-86	Change	"Consent Decree; and c) execute and" changed to "Consent Decree. c) execute and"
87	Change	"d) Settling Defendant shall, within 45 days" changed to "d) within 45 days"
88-89	Change	"45 days of entry of this...Decree, submit to" changed to "45 days of the Effective Date, submit to"
90	Change	"and approval with respect" changed to "and approval, with respect"
91-92	Change	"State by the 10 <sup>th</sup> of each April," changed to "State by the 20 <sup>th</sup> of each April,"
93-94	Change	"Community Right-to-know Act (EPCRA)," changed to "Community Right-to-Know Act (EPCRA),"
95-96	Change	"designates Peggy Churchill as its Project" changed to "designates Peggy Churchill as its Project"
97-98	Change	"Coordinator and Kathleen Hernandez as" changed to "Coordinator and Kathryn Hernandez as"
99	Change	"demonstration by one or...such Settling Defendant" changed to "demonstration by Settling Defendant"
100	Change	"Settling Defendant meets the financial" changed

		to "Settling Defendant that it meets the financial"
101	Change	"company of a Settling Defendant," changed to "company of Settling Defendant,"
102	Change	"264.141(h)) with at least one Settling Defendant;" changed to "264.141(h)) with Settling Defendant;"
103-104	Change	"Settling Defendant(s) have selected, and" changed to "Settling Defendant has selected, and"
105	Change	"Settling Defendant(s) shall execute" changed to "Settling Defendant shall execute"
106	Change	"Settling Defendant(s) shall submit" changed to "Settling Defendant shall submit"
107-108	Change	"Settling Defendant(s) have selected, and" changed to "Settling Defendant has selected, and"
109	Change	"Paragraph _____ with...Settling Defendants]." changed to "Paragraph _____."
110	Change	".44. If at any" changed to ".]44. If at any"
111-112	Change	"Settling Defendant(s) provide a Performance" changed to "Settling Defendant provides a Performance"
113-114	Change	"_____ above, such Settling Defendant" changed to "_____ above, the Settling Defendant"
115	Change	"professional engineer and Settling" changed to "professional engineer or geologist and Settling"
116	Change	"professional engineer stating that" changed to "professional engineer or geologist stating that"
117-118	Change	"FORCE MAJEURE. "Compliance"" changed to "FORCE MAJEURE or Paragraph 78. "Compliance""
119-120	Change	"Decree, EPA may give Settling" changed to "Decree, EPA will give Settling"
121	Change	"Settling Defendant pursuant to" changed to "Settling Defendant and...employees) pursuant to"
122	Change	"or 9613(f); and (ii) Sections" changed to "or 9613(f); (ii) Sections"
123-124	Change	"(v), 6928, or 6973, relating to" changed to "(v), 6928, or 6973; or...or 1364, relating to"
125-126	Change	"to the Site. These covenants" changed to "to the Site or to the Work. These covenants"
127-128	Change	"These covenants not to sue are conditioned" changed to "These covenants will take...are conditioned"
129-130	Change	"conditioned upon the satisfactory" changed to "conditioned upon Settling...Defendant's"

		satisfactory"
131	Change	"performance by Settling...of its obligations" changed to "performance of its obligations"
132	Deletion	Settling Defendant:
133-134	Deletion	a) to perform further...relating to the Site, or
135	Deletion	b) to reimburse the...costs of response
136	Change	"if, prior to" changed to "(a) to perform further...response, if, prior to"
137-138	Insertion	ii) information,...in whole or in part; and
139	Change	"ii) information,...part, and EPA determines" changed to "EPA determines"
140	Deletion	Settling Defendant:
141	Deletion	a) to perform further...relating to the Site, or
142	Change	"b) to reimburse the...costs of response" changed to ""
143	Change	"if, subsequent" changed to "(a) to perform further...response, if, subsequent"
144-145	Change	"whole or in part, and" changed to "whole or in part; and"
146-147	Change	"shall include only that information" changed to "shall include the information"
148	Change	"information and those conditions" changed to "information and conditions"
149-150	Change	"of the date the ROD was signed and set forth in" changed to "of the date this Consent...time, as set forth in"
151-152	Change	"forth in the Record of...and the administrative" changed to "forth in the ROD or...in the administrative"
153-154	Change	"administrative record...Decision. For purposes" changed to "administrative record as...that date. For purposes"
155-156	Change	"of Paragraph 81.a), the information" changed to "of Paragraph 82, the information"
157-158	Change	"shall include only that information" changed to "shall include the information"
159	Change	"information and those conditions" changed to "information and conditions"
160-161	Change	"Remedial Action and set forth in" changed to "Remedial Action, or...time, as set forth in"
162	Change	"forth in the Record of...Decision, the post-ROD" changed to "forth in the ROD"
163	Change	"ROD administrative" changed to "ROD or otherwise in the administrative"

164-165	Change	"administrative record, or in any information" changed to "administrative record as...any information"
166	Change	"Defendant's ownership or...transportation," changed to "Defendant's transportation,"
167-168	Change	"disposal, or the arrangement" changed to "disposal, or Settling Defendant's arrangement"
169	Change	"arrangement for the transportation," changed to "arrangement for transportation,"
170	Change	"in the ROD, the Work, or" changed to "in the ROD, as part of the Work, or"
171	Change	"the Work, or otherwise" changed to "the Work, or as otherwise"
172-173	Change	"otherwise ordered by EPA" changed to "otherwise approved by EPA"
174-175	Change	"by EPA, after signature of this Consent" changed to "by EPA pursuant to this Consent"
176-177	Change	"Consent Decree by the" changed to "Consent Decree, after the"
178	Change	"the Settling Defendant" changed to "the date that Settling Defendant"
179	Change	"Settling Defendant;" changed to "Settling Defendant executes this Consent Decree;"
180	Change	"natural resources, and for the" changed to "natural resources under...trusteeship, and for the"
181	Change	"assessments;" changed to "assessments relating to such damages;"
182-183	Change	"h) liability for response...of Future Response Costs" changed to "h) liability for Past Response Costs"
184	Change	"Response Costs (e.g. past response costs)." changed to "Response Costs."
185-186	Change	"to the Site. The...The Settling" changed to "to the Site. Only as...or 84. 93. The Settling"
187	Deletion	Mabey Murray LC
188	Insertion	Chapman and Cutler LLP
189	Insertion	Kevin R. Murray, Esq.
190	Deletion	Mabey Murray LC
191	Insertion	Chapman and Cutler LLP

Statistics:	
	Count
Insertions	99
Deletions	92

Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	191